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Supreme Court of the United States

OCTOBER TERM, 1935.

No. 439

RUFUS R. RAND, JR.,

Petitioner,

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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To the Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Rufus R. Rand, Jr., prays for a writ of certiorari to review an opinion of the United States Circuit Court of Appeals for the Eighth Circuit (.... F. (2) ...; R. 41-48), filed on August 13, 1935, affirming an order of redetermination of the United States Board of Tax Appeals (R. 28).

OPINIONS BELOW.

The memorandum opinion of the United States Board of Tax Appeals (R. 13-17) was rendered May 24, 1934, but is not officially reported. The opinion of the United States Circuit Court of Appeals for the Eighth Circuit (R. 41-48)

was filed August 13, 1935, and is found at .... F. (2) ....; (353-A Commerce Clearing House, Par. 9542; Prentice Hall, Inc., Federal Tax Service 1935, Par. 1789).

JURISDICTION.

This petition is submitted under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 936, 938. The date of the judgment asked to be reviewed is August 19, 1935 (R. 48-49).

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Alonzo T. Rand died intestate domiciled in Minnesota on October 31, 1925 (R. 40, 34). Among the assets of Mr. Rand's estate (which assets greatly exceeded in market value the liabilities of the estate (R. 34)) were 962 2/3 shares of the capital stock of Minneapolis Gas Light Company. On January 28, 1927, pursuant to a decree of distribution, these shares were distributed to Petitioner as one of the heirs of said intestate (R. 33).

On May 28, 1928, Petitioner sold said shares for $439,261.05, realizing thereby a taxable gain of $269,841.72 (R. 33). In his income tax return for the calendar year 1928, Petitioner reported said gain as capital gain on the theory that it was derived from the sale of capital assets, within the meaning of Section 101 of the Revenue Act of 1928. Respondent contends that said gain was taxable as ordinary income at the normal and surtax rates. The United States Board of Tax Appeals entered its decision for the Respondent. The Board's conclusion was affirmed by the United States Circuit Court of Appeals for the Eighth Circuit. If Respondent's contention is correct, the deficiency

in Petitioner's income tax for the calendar year 1928 is $20,736.45 (R. 34). If Respondent's contention is not correct, Petitioner has made an overpayment of income tax for the calendar year 1928 in the amount of $13,545.09 (R. 33).

QUESTION PRESENTED.

May shares of stock acquired by inheritance from an intestate, who died October 31, 1925, and not sold or otherwise disposed of until May 28, 1928, be said not to have been held for more than two years within the meaning of Section 101 (c) (8) of the Revenue Act of 1928, 45 Stat. 791, 811, merely because the distribution of the shares by the administrators of the intestate's estate was not effected until January 28, 1927?

REASONS FOR ALLOWANCE OF WRIT.

1. The decision below is in direct conflict with the decision rendered by the United States Circuit Court of Appeals for the First Circuit in *First National Bank of Boston vs. United States* (1935), 76 F. (2) 200, and was recognized by the Court below so to be in conflict when it said (R. 41): "* * * the contrary view is declared in *First Nat.' Bank of Boston vs. United States,* 76 Fed. (2) 200, C. C. A. 1." A Petition for Certiorari has been filed with the Clerk of this Court by the Government in the *First National Bank of Boston* case and is No. 110 on the current docket.

2. The decision below is in direct conflict with the decision rendered by the United States Circuit Court of Appeals for the First Circuit in *Lee vs. Commissioner of Internal Revenue* (1935), 76 F. (2) 203. A Petition for a Writ of Certiorari has been filed with the Clerk of this Court by

the Government in the *Lee* case and is No. 111 on the current docket.

3. The point of law at issue in the instant case was taken by the United States Board of Tax Appeals to have been determined by *McFeely vs. Commissioner of Internal Revenue* (1934), 29 B. T. A. 998, affirmed (C. C. A. 3, 1934), 74 F. (2) 1017, in which case this Court *granted* a Petition for Certiorari on May 20, 1935, ... U. S. ... (Docket No. 24).

4. The decision below is in conflict with the principle enunciated by this Court in *Brewster vs. Gage* (1930), 280 U. S. 327, that a distributee acquires property from the estate of an intestate as of the date of the intestate's death and not as of the date of distribution.

5. The decision below is in conflict with the principle enunciated by this Court in *Helvering vs. Bliss* (1934), 293 U. S. 144, that the capital gain sections of the Federal Revenue Acts are liberalizations of the law and are not to be narrowly construed.

Wherefore, your Petitioner respectfully prays that a Writ of Certiorari issue to the United States Circuit Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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